Complainant (Bridgewater)

V.

Respondent (Easton)

I. <u>COMPLAINANT'S CHARGES:</u>

The Complainant alleges that the Respondent employer discontinued accommodating her disability (allergies to mold, mildew and chemicals) and insisted, in order to return to work, that she wear a full face respirator (for her entire 12 hour shift) even in areas of the plant where her doctor had indicated she had done okay in the past and was least likely to need the mask.

II. RESPONDENT'S ANSWER:

Respondent states that granting her requested accommodation (not working in the processing area of the plant) would have eliminated an essential function of her position. Instead, due to the Complainant's claim of extreme physical incapacity caused by reaction to unknown irritants, she was informed that she would need to wear a respirator at all times while she was in the facility.

III. <u>JUIRISDICTIONAL DATA:</u>

- 1. Date of alleged discrimination: 11/2/07.
- 2. Date complaint received by the Maine Human Rights Commission: 4/8/08.
- 3. Respondent employs a number of individuals in excess of the minimum jurisdictional requirements of state and federal employment laws and it is required to abide by the non-discrimination provisions of the Maine Human Rights Act, the Americans with Disabilities Act, and state and federal employment regulations.
- 4. The investigation consisted of a review of written submissions and an Issues and Resolution Conference.
- 5. The Complainant is represented by the Attorney Matthew Keegan.
- 6 The matter was not resolved.

IV. DEVELOPMENT OF FACTS

- 1. (Undisputed) The Complainant, who was hired in 2003, worker primarily as an "Inspector," until she was transferred to the position of "Scale-House Clerk" on 12/3/07. After the Complainant requested a return to her prior position, she was informed by the Respondent that she would need to wear a respirator at all times when she was in the facility in order to return to her Inspector position.
- 2. (Complainant, hereinafter "C") Due to my physical disabilities, ¹ I presented doctor's notes restricting me from working in certain areas of the plant. The Respondent has in large part accommodated me over my years of employment. However, on 11/2/07, I was made to go to "Processing," even though I explained to my supervisor that I could not work there due to my allergies. I had an allergic reaction (burning eyes, dizziness, heart palpitations). My supervisor then asked me to go to another area of the plant, but I said I could not go there either because I had also gotten sick there, so I was sent home for the night.
- 3. (C) On 11/13/07 I filled out a "Reasonable Accommodation Request" form (attached hereto as "Exhibit A-1") which listed my disability (food and environmental allergies, multiple chemical sensitivities), the reason the accommodation was needed (dizziness, fatigue, chest pain...when in certain areas ['Processing,' 'Trimming,' 'Spiral Deck'] of the plant), as well a requested accommodation of "chang[ing] job title to packing assistant, no working in areas that I get reactions to allergies."
- 4. (C) While my accommodation request was being considered by the Respondent, I decided to apply for the position of "Scale-House Clerk" because I believed it would be better for my narcolepsy and allergies and that the Respondent would not have to worry about my accommodation requests.
- 5. (C) However, once I tried the job and learned that my supervisor was against me taking the position but had been forced to do so by management, as well as learning that my mistakes were being tracked to set me up for firing, I requested a return to my prior position, "Inspector," within the 90 day period allowed under company policy.
- 6. (C) I was then told that, if I wanted to return to my prior position, I would need to wear a respirator, even though I did not need one if I was allowed to work in Packing. Therefore, I was under the impression that the respirator would only be

¹ In addition to allergies and chemical sensitivities at issue in this case, the Complainant has also requested (and received) an accommodation of working only on the day shift, due to a narcolepsy condition.

subject to the supervisor's discretion.

The Complainant also filed a very similar Reasonable Accommodation request form (Exhibit A-2) two days later, on 11/15/07, which provided more specificity as to the food and environmental allergies claimed by the Complainant. It also (arguably) limited the Complainant request for non-assignment only to "Processing," while the earlier form also requested non-assignment to "Trimming" and the "Spiral Deck."

The Respondent denies any 90 day "right" to return to a prior position exists and states that return is

- used in rescues. The Respondent asked me to undergo a pulmonary and fit test (both of which I passed) but I was unable to tell the doctor the type of respirator the company wanted me to wear, or how long I would be wearing it.
- 7. (C) On or about 2/26/08, I met with my supervisor and he informed me that I would be required to wear the respirator, every day I worked, for the entirety of my daily 12 hour shift. I told him that there was no way I could wear a full face respirator 12 hours every day, nor would I have to, if I was allowed to work in Packing. The man who had performed the fitness test informed me that a full respirator would be much too cumbersome for me to wear every day.
- 8. (C) On 2/29/08, I received a letter (Exhibit B) from the Respondent (HR Mgr.) It stated that, "until such time that [I] chose to wear the provided respirator, become non-reactive to your work environment or provide another option acceptable to Respondent, [I was] "placed on an unpaid personal leave of absence."
- 9. (C) I believe that I am capable of performing my job duties in packing (without the respirator) and that the Respondent simply does not wish to accommodate me any longer. I also believe that the decision to put me in Processing on 11/2/07 was does intentionally to harass and intimidate me due to my disability.
- 10. (Respondent, hereinafter "R") The essential functions of the Complainant's position ("Inspector") require her to work in <u>both</u> the processing and packing area of the facility. Her tenure reflects numerous performance issues, and repeated, and inconsistent, claims of physical aliments claimed to be caused in various areas of the facility. Throughout the Complainant's employ, the Respondent has engaged in the interactive process and provided temporary, modified duty assignments in response to the Complainant's ever-changing claims of physical ailments.
- 11. (R) The Respondent has also offered the Complainant opportunities to transfer to positions that work in parts of the facility where she has not alleged allergic reactions have occurred, but she took advantage of this type of transfer only once, when she briefly transferred to the Scale-House Clerk position (December 2007 through February 2008), which allowed her to work on a day shift, to address the concerns of her alleged narcolepsy. The Complainant was provided with this position, even though she was not the most qualified candidate, in response to her accommodation request.
- 12. (R) However, the Complainant failed to meet the performance expectations of that position and she later requested a return to her prior position of Inspector. Then, because of the Complainant's claims of current and potential extreme physical incapacity caused by unknown airborne irritants in the areas where the essential functions of the Inspector position are performed, the Respondent required the Complainant to wear a respirator before being allowed to return to her Inspector position. The Complainant passed both a Pulmonary Function evaluation and a

FIT test in late February 2008 but then informed the company that she would not wear the respirator after all. Since the Complainant provided no basis for this refusal, she was placed on an unpaid medical leave of absence. The Complainant's recent request to return to work (premised by an indication of her willingness to now wear the respirator) is under review by Respondent's medical director.⁴

- 13. (R) Although the Respondent has complied with its own policy of providing temporary modified duty assignments to employees (such as the Complainant) whose medical restrictions can be reasonably accommodated, such assignments were neither any claimed acknowledgment of any claimed disabilities by the Complainant, nor were they a permanent modification to any of her position's essential functions.
- 14. (R) The Respondent agrees that, on 11/2/07, despite a request from her supervisor, the Complainant failed to go to an area of the facility where an essential function of her position was to be performed. On or about 11/16/07, the Complainant submitted a letter ("Exhibit C," in support of her Request for Accommodation) in which she stated that she had environmental allergies, food allergies and (chemical) sensitivities to the processing part of the plant. She stated that she did not know what caused her reactions. She listed her symptoms as "...coughing, gagging, loss of air, itchy/dry or watering of eyes, pain in chest going to lungs, dizzy spells, fatigue, heart racing and loss of concentration."
- 15. (R) Prior to that date (11/16/07), the Complainant had also made the following requests for accommodation:
 - 9/20/06 Respondent received note from Dr. AO which requested that the Complainant be "...excused from working in any area that may provoke her allergies... [who] has a medical condition where exposure to such would be detrimental to her health."

In response, the company's Production Mgr. and the Occupational Health nurse decided that (per Respondent's Modified Return to Work program) they would place the Complainant in the Packaging area of the plant, at her request. This was a temporary placement.

8/28/07 – Respondent received a second note from Dr. AO which requested that the Complainant "...should avoid working in an area with excessive fumes/chemicals that could exacerbate her environmental allergies."

In response, the (same) Production Mgr. and a (successor) Occupational Health nurse decided that (per Respondent's Modified Return to Work program) they would place the Complainant in the Packaging area of the plant, at her request. This (again) was a temporary placement.

⁴ Investigator – The Complainant agreed to return to work and use the full face respirator in late July 2008.

10/10/07 – Respondent received a note from another one of the Complainant's doctors, Dr. DW, who recommended that the Complainant work only the day shift due to her narcolepsy.

In response, the company honored this request and moved the Complainant to the Inspector position on the day shift.

- 16. (R) In response to the Complainant's 11/16/07 request, the Respondent placed the Complainant into the Scale-House Clerk position within two weeks thereafter. The Complainant stayed in that position for approximately 60 days but (during her 60 day evaluation, on 2/14/08) she claimed that her narcolepsy made it impossible to continue in that position. The Respondent again immediately honored her request and returned the Complainant to an Inspector position. During this 2/14/08 meeting, the Complainant agreed to wear a full face respirator to alleviate her allergic reactions within the Respondent's plant. Pursuant to this agreement, the Complainant underwent (and passed) a Pulmonary Function test (on 2/25/08) and on 2/26/08, the Complainant completed and passed a FIT test (to ensure that the respirator supplied by the Respondent was secure around her facial features and properly filtered the air).
- 17. (R) However, shortly after the Complainant completed the FIT test on 2/26/08, she then indicated that she would not be willing to wear the mask "because people would laugh at her." Although the Respondent had no basis to deny the Complainant's assertion that she did not need the respirator if she only worked in Packing, her position's essential functions, also required her to work in the Processing area (an area in which she claims to suffer allergic reactions), so she was told she would be required to wear a respirator if physically able. The Respondent has no knowledge of the basis for the Complainant's stated belief (in her MHRC) charge that the respirator would only be used for "rescues."
- 18. (R) Although the Complainant's MHRC charge also asserts that during her pulmonary evaluation (on 2/25/08) that she was "unable to tell the doctor what type of respirator [Respondent] wanted me to wear or how long I would be wearing it," that information is irrelevant, since her pulmonary capacity evaluation (and her FIT evaluation on 2/26/08)indicated that she was physically capable of wearing a respirator without restrictions.
- 19.(R) Therefore, on 2/29/08, in response to the Complainant's refusal to wear the respirator, the Respondent's HR Mgr, Mr. One, wrote a letter to the Complainant, which stated in pertinent part, that:

In the interest of your safety, and until such time as you choose to wear the provided respirator, become non-reactive to your work environment, or provide another option acceptable to [Respondent] for which to ensure your safety while meeting your position's primary responsibilities, you are being placed on an

unpaid personal leave of absence.

20. (R) By letter dated 4/1/08, the Complainant subsequently requested additional information⁵ from the Respondent regarding the length of use and anticipated working conditions for which she would use the respirator. The Complainant also sent a later letter and Reasonable Accommodation Request form (dated 4/7/08) in which she again requested that, due to her narcolepsy, she 1) not work nights, and, that due to her allergies and chemical sensitivities, 2) she not work in Processing, stay in the Packing area (including frozen inspection), where she was "...least likely to need work adjustments such as mask (respirator wearing)." The Complainant's 4/7/08 letter also included a note from her doctor (dated 3/20/08) which provided in full:

Could you kindly accommodate [Complainant's] medical conditions at work by placing her in an area such as packaging where she is least likely to need work adjustments such as mask wearing. She has worked in that area in the past and done OK."

- 21. (Investigator) The Complainant filed her MHRC charge alleging all of the foregoing on 4/7/08.
- 22. (Respondent) On 4/10/08, the Respondent responded to the Complainant's April 1st letter (requesting more information on the respirator) and her April 8th letter "requesting a change of [her] work position⁶," in pertinent part, as follows"

[Respondent] is not permitted to provide the information you requested for the Respirator Medical Evaluation Questionnaire...even if permitted to do so, this exercise would be irrelevant, as the information you provided on the form and reviewed at your physical assessment in February was sufficient for the reviewing physician to approve your use of the respirator without restrictions...With regards to your April 8th letter, requesting a change in your work position based upon the request of [Dr. AO], we are unable to meet this request. [Dr. AO] has provided no information that you allergies have abated, and further, states that your risk of an allergic reaction continues to exists even in the packaging area of the plant. As your current position requires you to work in the packaging area of the plant, and [Respondent's] foremost concern is for its employee's safety, with your allergic reactions so severe as to cause extreme dizziness (based upon your statements), along with your inability to determine the cause of these reactions, we are unable to allow you to return to the facility at this time. As stated in our 2/29/08 letter, until you choose to wear the respirator, become non reactive to your work environment, or provide another option acceptable to [Respondent] for which to ensure your safety while *meeting your position's primary* responsibilities, you will remain on an unpaid personal leave of absence.

⁵ The Complainant had also enclosed two pages of an OSHA medical questionnaire which had given to her by the individual who performed the Pulmonary Function test on 2/25/08.

⁶ Investigator: neither the Complainant's 4/7/08 cover letter to the Reasonable Accommodation Request form nor her doctor's note, dated 3/20/08, appears to request a change in position, as seen in prior notes.

- 23. (Investigator) On or about April 21, 2008, the Complainant sent the Respondent a letter indicating that she was now willing to wear the subject respirator at work. The Complainant was subsequently asked to provide a medical release and would be required to undergo fitness for employment exam performed by the Respondent's company physician. At the Issue and Resolution Conference held on 6/25/09, both parties indicated that the Complainant eventually returned to work (wearing the full face respirator) on or about 7/21/08. In February 2009, the Complainant's doctor suggesting weaning her from the mask. In April 2009, the Respondent prepared a proposed schedule instituting this change, fazing out use of the respirator by increasing three hour intervals over the course of seven weeks. By the time of the IRC in June 2009, the Complainant reported that she was out on leave due to conditions (neck and shoulder) that she believed related to use and wearing of the respirator, although the Complainant stated that her doctor did not believe that the use of the respirator and her neck/shoulder problems were related.
- 24. (Investigator) The Complainant also filed a purported "amendment" to her MHRC charge in September 2008, in which she alleged that the Respondent had been aware that she had been medically able to perform all essential functions of her job since mid February 2008 and that the Respondent had refused her to allow her return to work until July 2008 (when she agreed to wear the respirator). The Complainant stated that the Respondent's decision to force her to wear a respirator and goggles was not necessary for her entire shift and that wearing the respirator in Packing was unreasonable based upon previously submitted medical notes she had provided. The Complainant described the respirator as "very unpleasant" and compelled use of it as "harassment." The amendment was presented to MHRC Executive Director Patricia Ryan who determined that the allegations of the amendment "are contained in the original [MHRC] charge."
- 25. The following additional information was offered by the parties and witnesses at the Issue and Resolution Conference:

Complainant – The Respondent accommodated my doctor's request that I not work in processing and other problematic areas (trim, spiral) for years and it was only when other started complaining in late summer 2007 that it ever became an issue. In August 2007, I had to self administer an EpiPen⁷ at work after having an allergy attack after I was sent to a very hot room upstairs. My supervisor was aware of my use of the EpiPen and that I carried one on my belt at work. I was asked to work in Processing only on a few occasions when we were short staffed. In November, the Respondent began regularly scheduling me to go to processing.

Respondent – The Complainant has been with the company for six years and used over 600 days of medical leave. She was out from 2/29/08 through 7/21/08 simply because she refused to wear the respirator mask. She was also given the

⁷ The Epinephrine self injector website describes its use as helping to stop allergic reactions for those with a history of anaphylaxis, a sever swelling of the throat, tongue, hives or trouble breathing.

accommodation of the Scale-House Clerk position even though she was less qualified than others who applied. The same chemicals exist in all parts of the plant and the Complainant's job as an Inspector requires her to be in all three parts of the plant. Neither the Complainant nor her doctor has been able to guarantee that she will not have a reaction in packaging. The Complainant was later switched to a smaller respirator and smaller goggles. ⁸

V. ANALYSIS AND CONCLUSIONS

- 1. The Maine Human Rights Act requires the Commission in this investigation to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2. Complainant alleges that Respondent failed to provide her with a reasonable accommodation (not working in areas that exacerbated her allergies and chemical sensitivities) for her physical disabilities
- 3. Respondent denied that it unlawfully discriminated against Complainant and state that the Complainant's requested accommodation was not reasonable in that it would have eliminated an essential function of her position (working in areas other than Packaging). The Respondent further claims that its proposed accommodation (use of a respirator at all times while the Complainant was in the facility) was reasonable given the medical information submitted by the Complainant and her physicians.
- 4. The Maine Human Rights Act, 5 M.R.S.A. § 4572 (1)(A) provides in part that:

It is unlawful employment discrimination, in violation of this Act... for any employer to... because of... disability...to discriminate with respect to the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment...."

5. The Act also defines unlawful discrimination to include "[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity." 5 M.R.S.A. §§ 4553(2)(E), 4572(2).

⁸ At the IRC, the Respondent agreed to provide either the actual respirator(s) used or pictures of the same for comparison, but no materials of either kind were ever provided to this Investigator. However, the FIT test results supplied by the Respondent indicate that the specific respirator model was a "North 76008A." A picture and brief product description is attached hereto as "Exhibit D."

- 6. The Act also prohibits "punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act. . . ." 5 M.R.S.A. § 4553(10)(D).
- 7. The Maine Human Rights Act defines "physical or mental disability," in relevant part, as follows:
 - **1. Physical or Mental Disability, defined.** Physical or mental disability" means:
 - A. A physical or mental impairment that:
 - (1) Substantially limits one or more of a person's major life activities;
 - (2) Significantly impairs physical or mental health; or . . .
 - D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A
 - **2.** Additional terms. For purposes of this section:
 - A. The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices; and
 - B. "Significantly impairs physical or mental health" means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population.

5 M.R.S.A. § 4553-A

- 8. The term "qualified individual with a disability" means "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S.A. § 4553(8-D). Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, [and] the provision of qualified readers or interpreters. . . ." 5 M.R.S.A. § 4553(9-A). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S.A. § 4553(9-B).
- 9. To establish a denial of reasonable accommodation claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that she is a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so

affected the terms, conditions, or privileges of Complainant's employment. *See id.*

- 10. Generally, it is Complainant's responsibility to request a reasonable accommodation. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 261 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." *See Plourde v. Scott Paper Co.*, 552 A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. 3.08(D)(1) (July 17, 1999).
- 11. In arriving at a recommendation the following facts are noted:
- a. It is certainly debatable whether or not the Complainant's environmental allergies should qualify as a physical disability under the MHRA or the ADA, especially when the allergens identified by her physician (goldenrod, ragweed, red maple, dust mites...chocolate, tomato, cow's milk...) were not prevalent or even known to be present in the Respondent's facility. Although later medical notes did request that the Complainant be allowed to work in areas that might provoke her allergies since such exposure "would be detrimental to her health (doctor's note dated 9/2/06), the degree or nature of that detriment is not further identified. The next note, dated 8/28/07, again requests that the Complainant avoid working in areas with excessive fumes or chemicals that could exacerbate her environmental allergies, but no consequences for noncompliance are foreshadowed. In November 2007, apparently in response to a return to scheduling that had the Complainant working more in Processing, she requested a formal accommodation of having her position changed to "Packing Assistant," so that she would no longer have to work in certain areas where she claimed she had allergic reactions. The resolution of the issue was at least resolved in the short term by the Complainant being allowed to transfer to the "Scale-House Clerk" position. from early December 2007 through mid February 2008, when she decided that her performance was likely going to lead to her firing, so she requested a return to her Inspector position, and concomitantly, a resurrection of her requested accommodation, that she not have to work in Processing. Rather than grant the Complainant's requested accommodation (not being assigned to work in Processing), the Respondent instead proposed its own accommodation, namely that the Complainant would need to wear a full respirator at all times she was anywhere within the facility, for the entirety of her 12 hour shift. The focus of this report is whether the Respondent's proposed accommodation was reasonable in light of all of the medical information, essential functions of the Complainant's Inspector position, and the operational needs of the facility.

b. It is found that, while the Respondent's proposed accommodation (use of a full respirator at all times the Complainant was anywhere in the Respondent's facility) did undoubtedly address the need to keep allergens from contact with the Complainant's olfactory system, it appears to be far in excess of what may have been needed to obtain the same preclusive effect. No medical documentation was

produced that suggested that same allergens could not have been filtered out just as effectively through a much lighter and more comfortable dust mask or particulate respirator. While it is true that neither the Complainant nor her doctor could guarantee that no reaction would ever occur were she not to wear the full respirator in the less volatile (Packaging) area of the plant, this is hardly a reason to demand that the full respirator therefore had to be worn, at all times, within even these minimal risk areas, simply on the remote chance a reaction might occur. The Complainant's doctor, in a March 2008 note, specifically requested that the Complainant be placed in an area "such as packaging" where she had "worked in the past" and "had done okay" and where she was least likely to need work adjustments "such as mask wearing." Therefore, the Complainant's own doctor presumably believed that it was not a significant danger for the Complainant to not use the mask in Packaging, despite the Respondent HR Mgr.'s conclusion to the contrary. The Respondent's decision not to supply any additional information about the mask (in response to the Complainant's letter and enclosed OSHA medical questionnaire in April 2008) also suggest that the Respondent may have been reluctant to share additional information about the specific device and intended extensive usage (in all areas of the plant, at all times during the Complainant's 12 hour shift) because they anticipated that the use of the device under these circumstances might appear excessive or overkill.

c. Although the Complainant later decided to return to work under the precondition that she agree to wear the full respirator, that decision really has no bearing on whether her leave of absence from mid February 2007 on was occasioned by unlawful disability discrimination or an unreasonable refusal to accept the Respondent's proposed accommodation. Although the Respondent has stated that the medical decision to employ the full respirator (and later review of the Complainant's medical conditions and notes) were reviewed under the guidance of a nurse or some other qualified medical provider, there have been no records or other evidence produced indicating how this type of respirator (and no other) could provide the requisite degree of protection to the Complainant. Although a full biohazard suit would also have protected the Complainant, it would be just as patently unreasonable as requiring the full face respirator here.

d. It may simply be that the Respondent, after admittedly accommodating the Complainant request to not work in Production (and other areas) for a number of years "on a temporary basis," simply grew tired of granting that privilege once other employees complained of perceived special treatment. Regardless, since the accommodation had been granted for well over a year prior to the Fall of 2007, it is hard for the Respondent to credibly argue that the accommodation was suddenly such an operational burden when the issue again came to a head in November 2007. The Inspector job description provided by the Respondent does not contain any information about the percentage of time an employee might likely spend in each area of the plant (Processing, Packing, Trim, Spiral) nor did the Respondent supply any statements from those who have held the position or supervisors to support the Respondent's claim that working in each area was an

"essential function" of the Inspector position. The Respondent may also have had legitimate concerns about whether or not the Complainant's environmental allergies even qualified as disabilities under the law, as well as whether her proposed accommodation (a change in position to keep her away from all problematic areas) was reasonable given that other types of masks might also have addressed the issue. Instead, the only proposed accommodation that was up for consideration was, use of the full respirator, in all areas of the plant, during the Complainant's entire 12 hour shift, or take indefinite, unpaid leave. Under these circumstances, the Respondent's proposed accommodation appeared to be unreasonable.

VI. <u>RECOMMENDATIONS</u>:

Based upon the information contained herein, the following recommendation is made to the Maine Human Rights Commission:

1.	That there are REASONABLE GROUNDS to believe that the Complainant was denied a reasonable accommodation for her disability by the Respondent;	
	and	
2.	That conciliation should be attempted in keeping with 5 M.R.S.A.§ 4612 (3).	
Patricia Ryan		Robert D. Beauchesne
Executive Director		Field Investigator